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BUREAU OF
ENVIRONMENTAL REMEDIATION

BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

400 S.W. Eighth Street

Suite 203

Topeka, Kansas 66603-3930

IN THE MATTER OF:)

POLLUTION AT THE)

TRI-COUNTY PUBLIC)

AIRPORT SITE)

MORRIS COUNTY, KANSAS.)

CONSENT ORDER

Case No. 00-E-0197

RECEIVED

NOV 17 P.M.

Process & Envir. Eng.

PRELIMINARY STATEMENT

The parties hereto, the Kansas Department of Health and Environment ("KDHE"), and Respondent Raytheon Aircraft Company (hereinafter "Respondent"), having agreed that settlement of this matter is in the best interests of all parties and the public, hereby represent and state as follows:

1. KDHE is a duly authorized agency of the State of Kansas, created by act of the legislature.
2. KDHE has general jurisdiction of matters involving hazardous substance and hazardous substance cleanups under the authority of the Kansas Environmental Response Act (K.S.A. 65-3452a. et seq.), as well as hazardous waste and its cleanup (K.S.A. 65-3430 et seq.) and has general authority and responsibility to protect the waters and soils of the state under the authority of K.S.A. 65-161, et seq.
3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. In any action by KDHE to enforce the terms of this Consent Order, the Respondent agrees not to contest the authority or jurisdiction of the Secretary of Health and Environment to issue this Consent Order.
4. This Consent Order shall apply to and be binding upon KDHE and the Respondent, its agents, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No

change in the ownership or corporate status of the Respondent shall alter its responsibilities under this Consent Order.

5. The Respondent shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred. The Respondent shall provide a copy of this Consent Order to all primary contractors and consultants which are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Consent Order and for ensuring that its contractors and agents comply with this Consent Order.

6. The activities conducted under this Consent Order are subject to approval by KDHE and shall be undertaken in a manner that is consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300.

7. While the Respondent to this Consent Order does not admit liability for the contamination at the Tri County Public Airport Site and the surrounding environment, nevertheless it agrees to enter into this Consent Order to prepare a Work Plan as described in paragraph 49 below, to be attached hereto marked Exhibit 4 and incorporated herein upon approval by KDHE.

FINDINGS OF FACT

8. The Tri County Public Airport site is a former army airfield located in Morris County, Kansas. The site includes the Tri County Public Airport facility and all associated contaminated areas. The site is illustrated on the attached map.

9. In 1943, the Herington Army Airfield ("HAAF") was activated. Between 1942 and 1944 the U.S. Government acquired the real property which comprised the HAAF. The HAAF covered 1,724 acres in Sections 31 and 32, Township 15 South, and Sections 5, 6, and 18, Township 16 South, all in Range 6 East of the Delavan Kansas Quadrangle. The primary function of the HAAF was the processing of bombardment crews and heavy equipment, including aircraft such

as B-24 and B-29 bombers, before their deployment overseas. Activities at the HAAF included aircraft and vehicle maintenance, pilot training, marksmanship, and aircraft mechanical support operations. The main facilities at the HAAF included runways, hangars, aircraft maintenance shops, fuel storage tanks, motor pools, hospital, ordinance area, salvage yard, airplane wash racks, barracks, administration buildings, a sewage treatment plant, and a landfill. It has been alleged that the Army used TCE in performing mechanical and maintenance activities at the HAAF.

10. The HAAF was deactivated in 1946. In 1948 title to the HAAF was conveyed to the City of Herington, Kansas. The City of Herington held title until 1979 when title was conveyed to the Tri-County Public Airport Authority. In May of 1998, the City of Herington Commission dissolved the Tri-County Public Airport Authority and property ownership was transferred back to the City of Herington. The City of Herington is the current owner of the Site.

11. Beech Aircraft Corporation ("Beech"), the predecessor to Raytheon Aircraft Company, leased a portion of the Tri-County Public Airport from the City of Herington from 1950 to the early 1960s. This partial leasehold covered several airport buildings and included the use of the airport taxiways and apron, existing machinery, equipment, and tools.

12. It is alleged that as part of its operations at the Site, Beech used TCE as a degreaser.

13. The United States Army Corps of Engineers ("USACE") conducted an investigation at the Site from 1994 to 1997 to determine whether Department of Defense ("DOD") activities at the HAAF resulted in contamination of soil or groundwater. A final report detailing the results of this investigation was completed on July 30, 1998. During this investigation several areas of interest ("AOIs") relating to former Army activities conducted at the Site were studied, including the landfill, the wastewater treatment plant, and a paint, oil, and dope storage building. Twenty-five groundwater locations were sampled by the USACE, including 4 temporary monitoring wells, 16 permanent monitoring wells, 3 existing on-Site water supply wells, and 2 off-Site private water

supply wells. Groundwater samples were collected during at least two sampling events. In 1995 TCE was detected in 6 groundwater samples with concentrations ranging from 4 to 190 micrograms per liter ("µg/L"). In 1997 TCE was detected in 6 groundwater samples with concentrations ranging from 40 to 240 µg/L.

14. In May 1996 the Kansas Department of Health and the Environment ("KDHE") completed a preliminary assessment/screening site inspection ("PA/SSI") of the Tri-County Public Airport site in response to the detection of TCE during the USACE investigation. This investigation included a search for potential sources, the sampling of selected USACE groundwater monitoring wells, and a limited investigation of the surface water, soil, and water pathways.

15. During the PA/SSI 6 groundwater samples were collected, 5 from USACE groundwater monitoring wells and one from a well located adjacent to water supply well #1. TCE was detected in these samples at concentrations ranging from 2.7 to 151 µg/L.

16. The KDHE concluded that groundwater beneath the Site was contaminated with TCE dispersed in several plumes and that multiple contamination sources existed at the Site.

17. In October 1997 EPA sampled private water supply wells in the area around the Site as part of a removal evaluation ("RE"). This activity was initiated by the detection of TCE in 4 samples collected from 3 private water supply wells. The purpose of the RE was to determine if TCE was present in private water supply wells in Latimer and areas in the vicinity of the Tri-County Public Airport.

18. As part of the RE, forty-three groundwater samples were collected from areas around the Site including the town of Latimer, Kansas, which is located approximately 2.5 miles to the northwest of the Site. TCE was detected in the 15 private water well samples collected in the immediate area of Latimer and the 8 samples from the surrounding area.

19. TCE concentrations detected in wells within Latimer (16 to 34 µg/L) exceeded the maximum contaminant level ("MCL") of 5 µg/L set forth in 40 C.F.R. Part 141. Six of the 8 groundwater samples collected from wells in the surrounding area had concentrations (10 to 190 µg/L) exceeding the TCE MCL.

20. In 1997 KDHE conducted a Preliminary Removal Evaluation ("PRE") concurrently with the Tri-County Public Airport site RE. The purpose of the PRE was to determine the impact of carbon tetrachloride and ethylene dibromide on ground water in the immediate areas in and around the community of Latimer.

21. Carbon tetrachloride was detected in 7 of the 22 samples collected from private wells in and near Latimer with concentrations ranging from 1.6 to 14.8 µg/L. The MCL for carbon tetrachloride of 5 µg/L was exceeded in 3 of the samples.

22. KDHE concluded that carbon tetrachloride and ethylene dibromide were confined to Latimer and areas to the northwest of Latimer and that the source of these contaminants was not likely the Site, but rather was likely the former Latimer Agriservices facility.

23. In 1998 KDHE began a Comprehensive Investigation ("CI") based on the findings of the PRE conducted in 1997. The objectives of the CI included delineating the carbon tetrachloride and ethylene dibromide groundwater contamination plume and source areas, and identifying and characterizing the aquifers into which the private wells are completed. The area of investigation included the community of Latimer and the area to the northwest of Clarks Creek. Investigation activities were completed in August of 1998 and included the collection of subsurface soil samples, collection of groundwater samples from private water supply wells, and the installation and sampling of monitoring wells.

24. Twenty-three subsurface soil samples were collected at 11 locations primarily in the vicinity of the former Latimer Agriservices facility. The samples were collected at depths of 3 to

15 feet and were analyzed for, among other things, those VOC's commonly associated with activities performed at an agriservices facility. Carbon tetrachloride and chloroform were detected in one sample with concentrations of 0.1 and 0.5 micrograms per kilogram ("µg/Kg") respectively. Cis-1,2-dichloroethene was detected in three soil samples with concentrations ranging from 7.6 to 9.9 µg/Kg.

25. Fourteen private water well samples were collected at 13 locations and all were analyzed for VOCs. Carbon tetrachloride and chloroform were detected in 6 samples with concentrations ranging from 1.5 to 12 µg/L. TCE was also detected in the 9 samples collected in the immediate vicinity of Latimer at concentrations ranging from 14 to 22 µg/L.

26. Fifteen monitoring wells were installed at 11 locations during the CI with 2 rounds of samples collected from each. Carbon tetrachloride was detected in 2 wells with concentrations ranging from 1.5 to 44 µg/L. Ethylene dibromide was detected in 3 wells with concentrations ranging from 0.053 to 1.1 µg/L. TCE was also detected in 8 of the 14 wells with concentrations ranging from 1.4 to 23 µg/L.

27. KDHE concluded that the carbon tetrachloride and ethylene dibromide plume was centered to the northwest of the former Latimer Agriservices facility and that the source of the carbon tetrachloride and ethylene dibromide, while not conclusively determined, was likely the agriservices facility. KDHE also concluded that the source of TCE in the groundwater was likely the Tri-County Public Airport site.

28. In 1998 EPA initiated an Expanded Site Inspection /Remedial Investigation ("ESI/RI") at the Site with fieldwork conducted in two phases. Phase 1 included a spring/seep survey, sampling, and a geophysical survey of two areas on-Site. Phase 2 included source and pathway characterization. The primary objectives of Phase 2 were to verify that a release of TCE had occurred, determine the source areas, and characterize the vertical and areal extent of

contamination. The characterization of potential source areas involved the collection of 312 field analytical soil samples which were analyzed with a field gas chromatograph as well as the collection of 67 soil samples which were submitted for laboratory analysis. The characterization of groundwater included the installation and sampling of 30 monitoring wells in three aquifers, the sampling of 10 USACE wells, and the sampling of 43 water supply wells in the surrounding area. The characterization of surface water included the collection and analysis of 17 surface water samples and 9 spring and seep samples from the Clarks Creek drainage basin.

29. TCE was detected in exposed surface soil samples collected from Hangars 1 and 4. At Hangar 4 the surficial contamination was primarily confined to the area adjacent to where the TCE degreaser was formerly located with TCE concentrations in that area ranging from 5.6 to 26 $\mu\text{g/Kg}$. At Hangar 1 surficial concentrations of TCE ranged from 2.0 to 19 $\mu\text{g/Kg}$. The highest surface soil concentration of TCE was 88 $\mu\text{g/Kg}$ and was from a sample taken from the northwest side of Hangar 1. TCE was detected at a concentration of 270 $\mu\text{g/Kg}$ in the west drain sump inside of Hangar 4. TCE was also detected at a concentration of 45 $\mu\text{g/Kg}$ in a drain sump in the north motor pool area, a portion of the Site used by the United States Government but never leased by Beech.

30. TCE was detected in subsurface soil samples collected from Hangars 1 and 4, and an area to the north of Hangar 1. At Hangar 4 the highest subsurface contamination was detected at a depth of 1-2 feet at a concentration of 770 $\mu\text{g/Kg}$. At Hangar 1 the highest subsurface contamination was detected at a depth of 1-2 feet beneath the concrete adjacent to the northwest corner of the hangar with TCE found at a concentration of 2,300,000 $\mu\text{g/Kg}$. At the area to the north of Hangar 1, the highest subsurface contamination was detected at a depth of 11-12 feet with TCE found at a concentration of 23 $\mu\text{g/Kg}$.

31. Monitoring wells installed during the ESI/RI verified that the Site is underlain by a succession of shale and limestone aquifers. Numerous vertical and diagonal fractures were observed in the rock cores obtained at selected locations. Results of the monitoring well sampling demonstrated that TCE has impacted the unconfined Cresswell Aquifer and the underlying Stovall and Towanda aquifers.

32. The ESI/RI analytical results verify that off-Site water supply wells to the north and northwest of the Site have been impacted by VOCs, including TCE. TCE was detected in water wells in concentrations ranging from 1.8 to 280 µg/L. The highest TCE concentration detected in a water well used for human consumption was 56 µg/L located north of the Site. The TCE concentration in 22 of 25 of the samples in which TCE was detected exceeded the TCE MCL of 5 µg/L. Carbon tetrachloride was detected in several of the wells located in and near Latimer with concentrations ranging from 1.8 to 19 µg/L.

33. The results from 6 springs and seeps demonstrated the release of TCE to surface water with TCE concentrations ranging from 1.2 to 15 µg/L. The results of the surface water and sediment sampling indicate that in at least two locations the surface water has been impacted by TCE with concentrations of 1.2 and 1.5 µg/L, below the MCL.

34. Analytical results from the off-Site monitoring well samples indicate that the TCE is likely migrating northwest in the Cresswell, Stovall, and Towanda aquifers. Results of water well and spring and seep samples verify the presence of an apparent corridor of contaminated groundwater to the north and northwest of the Site.

35. In November 1997, EPA approved a fund financed time-critical removal action to address contaminated drinking water wells affecting residences near the Site. EPA determined that there was an immediate risk to human health and welfare or the environment and that response actions were immediately required to prevent, limit, or mitigate conditions resulting from the presence of

TCE, carbon tetrachloride, and ethylene dibromide above MCLs in several drinking water wells. EPA's removal action consisted of providing bottled water to 13 residences and a carbon filtration system for one residence.

36. Pursuant to an Administrative Order on Consent filed with EPA Region VII's Hearing Clerk on March 29, 2000 under Docket No. CERCLA-7-2000-0013, RAC agreed to provide for the installation and maintenance of whole-house water treatment systems on those residences utilizing private water wells that exceed the MCL for TCE and/or TCE degradation products released at or from the Site.

37. TCE is classified by EPA as a B2 probable human carcinogen.

38. Pursuant to the above described investigations, KDHE has determined that the groundwater underlying the Tri County Public Airport Site and adjacent areas is contaminated by hazardous substances and hazardous wastes, many of which are chlorinated organics which are the result of one or more releases of hazardous substance(s) and hazardous waste(s).

39. KDHE has determined that the contamination of the groundwater beneath the Tri County Public Airport site and adjacent areas is causing or threatens to cause pollution of the waters of the State or is or threatens to become a hazard to persons, public health, or safety.

CONCLUSIONS OF LAW

40. Respondent is a "person" within the meaning of K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq., and K.S.A. 65-3452a, et seq.

41. The presence of the TCE and its degradation products (hereinafter collectively referred to as "TCE") identified in the groundwater underlying the site constitutes "pollution" as defined by K.S.A. 65-171d.

42. TCE is a "hazardous substance" as defined by K.S.A. 65-3452a and "hazardous waste" as defined by K.S.A. 65-3430.

43. The area defined in paragraph 8 and identified as the Tri County Public Airport Site in Morris County, Kansas constitutes a "site" within the meaning of K.S.A. 65-3453.

44. The facts above constitute:

- a) the discharge, abandonment, or disposal of hazardous substances or hazardous wastes;
 - 1. the pollution of the land or waters of the state or the threat of pollution of the land or waters of the state;
 - 2. a hazard to persons, property or public health or threatens to become a hazard to persons, property or public health.

45. Under the facts as shown above, the Kansas Department of Health and Environment has concluded, and the Secretary has confirmed, that there is a need for a response action to prevent a continuing release or threat of release of TCE.

46. The investigation of such discharges is necessary to protect the public health and safety and the environment, giving rise to the authority of the Kansas Department of Health and Environment to enter this agreement. The purpose of the investigation is to determine the nature and extent of the threat to the public health or welfare or the environment caused by the release of TCE on or from the site, an evaluation of alternatives for the appropriate extent of remedial action to prevent or mitigate the migration of the release or threatened release of TCE from the site and a selection of a remedial alternative for TCE.

47. The Kansas Department of Health and Environment has authority to enter the agreement herein, and to make the findings of fact and conclusions of law herein stated.

48. The Secretary of Health and Environment is authorized by K.S.A. 65-3453, K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq. and the regulations issued pursuant thereto to enter an order confirming the agreement of the parties, and ordering the actions and obligations required by the

foregoing findings of fact and conclusions of law. The parties hereto agree to the following activities and the commitments.

ORDER

49. Within 60 days of the effective date of this Consent Order, Respondent shall submit a draft Work Plan for KDHE approval which is consistent with the Statement of Work ("SOW") attached hereto, marked Exhibit 1. KDHE will provide comments on the draft Work Plan. Within 30 days of receipt of KDHE's comments, Respondent shall submit for final approval a revised Work Plan that addresses KDHE's comments. Upon KDHE approval, the Work Plan shall become incorporated into this Consent Order and a part thereof as Exhibit 4.

50. Within 30 days from date of KDHE approval of the Work Plan, Respondents shall commence the implementation of the tasks detailed in the Work Plan. The work shall be conducted in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents including but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies" under CERCLA (OSWER Directive 9355.3-01) and with the standards and specifications contained in the Work Plan.

51. Respondent shall provide preliminary and final reports to KDHE according to the Implementation Schedule contained in Exhibit 4 in a form responsive to KDHE's comments.

52. After KDHE reviews the preliminary reports and after KDHE reviews the final reports, KDHE shall notify Respondent in writing, of KDHE's approval or disapproval of these reports or any part thereof. KDHE may also notify Respondent in writing of KDHE disapproval of Respondent's implementation of the approved Work Plan.

53. In the event of any KDHE disapproval of a submitted report or disapproval of Respondent's implementation of the approved Work Plan, KDHE shall send Respondent a Notice of Disapproval delineating the deficiencies, requiring revisions to the reports or modified work to cure the deficiencies in the work and setting a schedule for response by Respondent, provided

however that any such requirements are consistent with the objectives of the Work Plan and Consent Order.

54. Thereafter, Respondent shall amend and submit to KDHE revised reports to cure the deficiencies in the reports in accordance with KDHE's requirements.

55. Subject to the dispute resolution provision contain herein, KDHE may determine that additional tasks consistent with satisfying the objectives of this consent order are necessary in addition to the approved Work Plan tasks including reports, which have been completed pursuant to this Consent Order. After notification to and an opportunity to comment by Respondent, KDHE may require Respondent to implement any such additional tasks within a reasonable timeframe specified by KDHE. Failure by Respondent to implement additional tasks as required by KDHE, shall be considered a violation of this Consent Order. KDHE agrees to meet with Respondent to discuss said additional requirements.

56. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site investigations and remediation. Within 30 days of the effective date of this Consent Order, Respondent shall notify KDHE in writing of the name, title, and qualification of the engineer or geologist, and of any primary contractors and their personnel to be used in carrying out the terms of this Consent Order.

57. Any reports, plans, specifications, schedules and attachments required by this Consent Order are, upon approval by KDHE, incorporated into this Consent Order. Any noncompliance with such approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Consent Order.

58. No informal advice, guidance, suggestions, or comments by KDHE regarding reports, plans, specifications, and any other writing submitted to Respondent will be construed as

relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

QUALITY ASSURANCE

59. All samples analyzed pursuant to this Consent Order shall be analyzed using laboratory methodologies approved by KDHE.

60. All sample collection and analysis shall be performed in compliance with the approved Work Plan, including scheduling of analyses, documentation of sample collection, handling and analysis.

61. Laboratory analytical report forms shall be submitted to KDHE for all analytical work performed pursuant to this Consent Order. Any deviations from the procedures and methods set forth in these documents must be approved in writing by KDHE prior to use. Respondent will notify KDHE in writing within five (5) working days of notice or knowledge of a potential deviation from prescribed procedures or methods. Such notice shall provide information as to the nature of the deviation, if known, and outline a proposed investigation to determine whether the sample or results are potentially representative or should not be considered valid. If the results cannot be validated by evaluation of the Quality Assurance/Quality Control procedures, historical data, or laboratory protocol, Respondent will resample upon KDHE's approval and discretion. Respondent will notify KDHE at least seven (7) days before conducting resampling. Failure to follow the above procedure for notification of deviations will be considered violations of this order and will be subject to an administrative penalty of \$1,000 per violation upon written demand by KDHE and the data resulting therefrom shall be invalid.

62. Respondent shall use the quality assurance, quality control, and chain of custody procedures specified in the Quality Assurance Project Plan, which is part of the Work Plan, for all sample collection and analysis performed pursuant to this Order, unless otherwise agreed to in writing by KDHE.

63. All contracts for field work shall provide that KDHE representatives are allowed access, for auditing and evaluation purposes, at reasonable times upon reasonable request, to all personnel utilized by Respondent for sample collection and analysis and other field work. Upon request by KDHE, the laboratories shall perform analysis of a reasonable number of known samples provided by KDHE to demonstrate the quality of the analytical data.

REPORTING

64. Respondent shall provide KDHE with written progress reports quarterly, pursuant to the effective date of this Consent Order. At a minimum, these progress reports shall: (1) describe the actions, progress, and status of projects which have been taken toward achieving compliance with this Consent Order, as well as the actions which are scheduled for the next quarter; (2) identify any requirements under this Consent Order that were not completed as provided and any problem areas and anticipated problem areas in complying with this Consent Order; and (3) include all results of sampling, tests, data, and conclusions drawn, if any, from data generated pursuant to the Work Plan(s).

ACCESS

65. Any access agreement obtained by Respondent to perform the work specified herein shall provide that KDHE and any of its agents or contractors is authorized by the property owner to enter and move about the property for the purposes of, inter alia; interviewing site personnel and contractors; inspecting records, operating logs, and contracts related to the activities set out in the Work Plan; reviewing the progress of Respondent in carrying out the terms of this Consent Order; conducting such sampling and tests as KDHE deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to KDHE by Respondent. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this paragraph.

66. To the extent that work required by the Work Plan must be done on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain access agreements from the present owner(s) of such property within sixty (60) days of the effective date of this Consent Order. Best efforts includes, but is not limited to, reasonable payment of monies to the property owner. Any such access agreement shall be incorporated by reference into this Consent Order. In the event that agreements for site access are not obtained within sixty (60) days of the effective date of this Consent Order, Respondent shall notify KDHE regarding both the lack of and its failure to obtain such agreements within seven (7) days thereafter. In the event that KDHE obtains access for Respondent, all costs incurred by KDHE shall be reimbursed by Respondent. Upon KDHE's obtaining access for Respondent, Respondent shall undertake approved work on such property. KDHE shall not be responsible for any injury or damage to persons or property caused by the negligent or willful acts or omissions of Respondent, its officers, employees, agents, successors, assigns, contractors, or any other person acting on Respondent's behalf in carrying out any activities pursuant to the terms of this Consent Order.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

67. Respondent shall make available to KDHE all results of sampling, tests, or other data generated by or on its behalf with respect to the implementation of this Consent Order. Respondent shall submit these results in the progress reports described in the "Reporting" Section of this Consent Order. KDHE will make sampling results and other data available to Respondent.

68. Respondent shall notify KDHE at least seven (7) days before conducting any well drilling, installation of equipment, or sampling. At the request of KDHE, Respondent shall provide or allow KDHE or its authorized representatives to take split samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent KDHE shall allow Respondent or its authorized representatives to take split or duplicate samples of all samples collected by KDHE under this Consent Order. KDHE shall notify Respondent at least

seven (7) days before conducting any sampling under this Consent Order, provided, however, that if seven (7) days notice of sample collection activity is not possible, KDHE and Respondent shall give such advance notice to enable each party to have a representative present during said sample collection activity.

RECORD PRESERVATION

69. Respondent agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents which have not previously been provided to KDHE in its possession or in the possession of divisions, employees, agents or consultants or contractors which relate in any way to this Consent Order or to hazardous substance and waste management and disposal at the site. At the conclusion of six (6) years, Respondent shall then make such records available to KDHE for inspection or KDHE's retention or shall provide copies of any such records to KDHE upon KDHE's written request.

STIPULATED PENALTIES

70. Subject to the dispute resolution provisions herein, for each period of time that Respondent fails to submit reports or deliverables at the times set out in Exhibit 3 which is part of this Consent Order, or as otherwise agreed by KDHE in writing, Respondent shall pay as stipulated penalties upon written demand by KDHE, the following: \$3,000 for the first week of delay or part thereof; \$3,000 per day for each day of delay for the 8th through 14th day and \$4,000 per day of delay thereafter.

71. Subject to the dispute resolution provisions herein, any stipulated penalties shall be payable within twenty-one (21) days after Respondent's receipt of demand by KDHE and shall be paid by company check to:

Secretary of Health and Environment
400 S.W. Eighth Street
Suite 203
Topeka, Kansas 66603-3930

A copy of the check and a transmittal letter shall be sent to the KDHE contact specified herein. Respondent shall remit a check for the full amount of penalty stated in the demand.

72. Should Respondent fail to comply with a time requirement of any tasks required by this Consent Order, the period of noncompliance shall terminate upon Respondent's performance of said requirement.

FORCE MAJEURE

73. Delays that result from causes not foreseeable and beyond the Respondent's control and which cannot be overcome by due diligence shall not be a violation of the Respondent's obligations under this Consent Order. The Respondent shall notify KDHE orally as soon as possible, but no later than five (5) business days after the Respondent knows of any delay or anticipated delay in compliance with the requirements of this Consent Order, and in writing no later than five (5) business days after the oral notification of the delay. The written notice shall describe the nature of the delay, whether and why the delay was unforeseeable and beyond the control of the Respondent, the actions taken and/or that will be taken to mitigate, prevent and/or minimize further delay, and the anticipated length of the delay. The Respondent shall adopt all measures to avoid or minimize such delay. To the extent a delay is caused by circumstances beyond the control of the Respondent, or those resulting from delays caused by KDHE or any third party not under the control or employment of any of the signatories hereto, the schedule shall be extended for a period equal to the delay resulting from such circumstances. Such an extension does not alter the schedule for performance or completion of other tasks required by this Consent Order unless also specifically altered by amendment of this Consent Order. Failure to comply with the notice provision of this section may be grounds for KDHE to deny the Respondent an extension of time for performance. Unexpected delay events do not include unanticipated or increased costs of performance, changed economic circumstances, or normal precipitation events. If KDHE determines that the delay as stated in the Respondent's written

notice to KDHE was not due to unexpected delay events, an administrative penalty may be assessed as provided in paragraph 70.

DISPUTE RESOLUTION

74. If Respondent disagrees, in whole or in part, with any decision by KDHE pursuant to this Consent Order, Respondent shall notify KDHE in writing within thirty (30) days of receipt of the decision. Thereafter, the matter will be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed forty-five (45) days from the time the other party receives notification of the dispute under this paragraph. If the dispute is not resolved at the end of this period, KDHE agrees to advise Respondent of its final position on the dispute in writing. If the Parties cannot resolve the dispute through informal negotiations under this paragraph, then the last position advanced by KDHE regarding the dispute shall be considered binding on Respondent unless, within twenty (20) days after receipt of KDHE's final letter issued at the conclusion of the 45-day informal negotiation period, Respondent files a request for hearing pursuant to the Kansas Administrative Procedures Act. In all hearings initiated pursuant to this paragraph, Respondent shall have the burden of proving, by a preponderance of the evidence, that the Consent Order obligation or deadline is consistent with Respondent's interpretation or that the delay is caused by a force majeure event. After the final ruling, either party may seek judicial review in accordance with the Kansas Act for Judicial Review of administrative actions. Stipulated penalties are stayed and do not accrue during the time that the Respondent follows the dispute resolution procedures described above.

75. In the event that Respondent seeks dispute resolution concerning a date for performance of an act set out in the Scope of Work or the Work Plan, the date for performance of such act shall be extended for a period equal to the delay resulting from the invocation of the dispute resolution provision. However, such extension does not alter the schedule for performance of completion of other tasks required by this Consent Order unless also specifically altered by the amendment of

this Consent Order. In the event that it is determined that dispute resolution was not sought by Respondent in good faith, administrative penalties may be assessed at the rate of \$1,000 per day for each day of delay caused by such invocation of the dispute resolution provisions.

CONTRIBUTION PROTECTION

76. a. KDHE acknowledges that under 42 U.S.C. 9613(f)(2), by entry of this Consent Order, Respondent is not liable for claims for contribution regarding matters addressed herein, and that this Consent Order does not discharge any other potentially responsible parties.
- b. KDHE acknowledges that Respondent has a right of contribution under federal law and may have such rights under state law, against any, non-participating potentially responsible parties who may have created, contributed to, or otherwise become responsible for the matters described herein, in that Respondent expended or will expend reasonable response costs in performance of the activities required under this Consent Order, and KDHE agrees to provide reasonable assistance upon request from Respondent to assist Respondent with enforcement of its claims against such third parties. The assistance referred to herein shall include making available records which relate to such Consent Order that are relevant to the proceedings, or such other assistance as is reasonable and appropriate.
- c. The KDHE hereby expressly reserves a cause of action or any claims of whatever kind or nature not subject to this Consent Order which it may have or hereafter have against any other person or persons not afforded protection hereunder.

OTHER CLAIMS AND PARTIES

77. Nothing in this Consent Order shall constitute or be construed as a release for any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any

way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

OTHER APPLICABLE LAWS

78. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the substantive requirements of all applicable local, state, and federal laws and regulations.

PROJECT COORDINATORS

79. On or before the effective date of this Consent Order, KDHE and Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. The KDHE Project Coordinator will be KDHE's designated representative. To the maximum extent possible, all communications between Respondents and KDHE and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators. The parties agree to provide at least seven (7) days written notice prior to changing Project Coordinators. The absence of the KDHE Project Coordinator from the Site shall not be cause for the stoppage of work.

NOTIFICATION

80. Unless otherwise specified, reports, notice or other submissions required under this Consent Order shall be in writing and shall be sent to:

- a. For KDHE:
Rob Elder
Kansas Department of Health and Environment
Forbes Field, Bldg. 740
Topeka, Kansas 66620-0001
- b. For Respondent:
Steve Persons
Raytheon Aircraft Company
9709 E. Central
P. O. Box 85*

REIMBURSEMENT OF COSTS

81. Three months after the effective date of this Consent Order and quarterly thereafter, KDHE shall submit to Respondent an accounting of those costs described above which have been incurred by KDHE with respect to this Consent Order during the previous three month period.

82. If KDHE determines a Baseline Risk Assessment is appropriate, KDHE shall notify Respondent in writing. Respondent may, at its option, perform such assessment for submittal to KDHE for approval. In this event the Respondent shall pay KDHE's contractor to review the assessment on behalf of KDHE. In the event the Respondent elects not to perform the assessment, KDHE shall submit to Respondent an accounting for the cost of performing the Baseline Risk Assessment. Upon receipt of such accounting, Respondent agrees to reimburse KDHE for such amount. KDHE agrees to use a qualified contractor to perform such Risk Assessment.

83. If KDHE determines that a Community Relations Plan is appropriate, it shall submit to Respondent an accounting for the cost of development of a Plan for Community Relations, and implementation of such Plan. KDHE agrees to perform such work itself or use a qualified contractor to develop and implement such Plan. KDHE and Respondent shall coordinate on development and implementation of the plan. If KDHE determines that a Community Relations Plan is unnecessary, KDHE will draft and implement a Public Information Plan for which KDHE will submit to Respondent an accounting for the cost of development and implementation. Upon receipt of such accounting, Respondent agrees to reimburse KDHE for such amount.

84. KDHE shall submit to Respondent the cost of preparing and maintaining the Administrative Record for this Consent Order, including but not limited to photocopying, assembling, mailing, updating, storage and other maintenance services. Upon receipt of such accounting, Respondent agrees to reimburse KDHE for such amount.

85. Within thirty (30) calendar days from receipt of an accounting for costs and activities pursuant to this Consent Order, Respondent shall remit a check for the amount of those costs made payable to the Secretary of Health and Environment. Checks should specifically reference the identity of this site, and should be addressed to:

Kansas Department of Health and Environment
Capitol Tower- 400 S.W. Eighth Street
Suite 203
Topeka, Kansas 66603-3930

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Respondent shall remit a check for the full amount of those costs.

EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

86. This Consent Order shall become effective when signed by the Secretary of the Department of Health and Environment.

87. This Consent Order may be amended by mutual agreement of KDHE and Respondent. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both parties, and shall be incorporated into this Consent Order. Nothing herein shall limit KDHE's ability to require additional tasks as set forth in paragraph 55 herein.

TERMINATION

88. The provisions of this Consent Order shall terminate upon Respondent's receipt of written notice from KDHE that Respondent has demonstrated that the terms of this Consent Order, including any additional tasks which KDHE has determined to be necessary have been satisfactorily completed.

IN WITNESS WHEREOF, the parties have affixed their signatures below:

RESPONDENT:

by: Doug Oliver

Date: 11/20/00

STATE OF KANSAS:

Clyde D. Graeber
Clyde D. Graeber, Secretary
Kansas Department of Health &
Environment

Date: 12-11-00

CERTIFICATE OF MAILING

I hereby certify that on this 12th day of December, 2000, a true and correct copy of the above and foregoing Consent Order was deposited in the United States Mail, postage prepaid, and addressed to:

Beverly Roper
Blackwell Sanders Peper Martin
2300 Main Street Suite 10000
Kansas City, MO 64108

Kama J. Maruska
Staff Person

**SCOPE OF WORK
FOR A
REMEDIAL INVESTIGATION(RI)/FEASIBILITY STUDY (FS)**

GENERAL:

All work conducted under a Remedial Investigation/Feasibility Study (RI/FS) Consent Agreement shall be consistent with § 300.430 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300 (final rule promulgated 3/8/90), as provided by relevant portions of §§ 101-121 of the Comprehensive Environmental Response, Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986. All work performed pursuant to an RI/FS Consent Agreement shall also follow all pertinent EPA and KDHE RI/FS guidance. The general activities for an RI/FS that Respondent(s) are required to perform are identified by this RI/FS Scope of Work. All work performed pursuant to an RI/FS Consent Agreement shall follow the Implementation Schedule as included in the KDHE-approved Work Plan. All work performed pursuant to an RI/FS Consent Agreement shall follow all procedures and complete all activities as proposed in the final KDHE-approved RI/FS Work Plan.

SCOPING:

The Respondent shall meet with KDHE as necessary to address the scope of RI/FS activities. The RI/FS scoping should consider the following items: 1) assembling and evaluation of the existing data for the site, including the results of any prior investigations or activities (removals, pertinent site assessments or other investigations); 2) develop a conceptual understanding of the site based on the information described in the above item; 3) identify likely response scenarios and potentially applicable technologies and operable units/source control opportunities that may address site problems; 4) undertake limited data collection efforts or studies (if necessary or appropriate) to assist in scoping RI/FS response actions, and to identify the initial need for treatability studies as needed or appropriate; 5) identify the type, quality, and quantity of data that will be collected during the RI/FS to support decisions regarding remedial response activities; 6) identify relevant deliverables for the RI/FS process; and 7) to initiate the identification of potential applicable or relevant and appropriate requirements (ARARs) for actions at the site. Discussion regarding the initiation of community relation activities may also be appropriate as determined by the KDHE Project Manager. Information gathered during these meetings will assist in the development of an RI/FS Work Plan.

PURPOSE OF RI:

The purpose of the **Remedial Investigation (RI)** is to collect data on TCE necessary to adequately characterize the site for the purpose of developing and evaluating remedial alternatives. Field investigations should be conducted as necessary to provide sufficient data to characterize the site and to assess the risks

to human health and the environment as well as support the development, evaluation, and selection of appropriate response alternatives to address TCE in groundwater. Site characterization may be conducted in one or more phases to focus sampling efforts and increase the efficiency of the RI. The primary objectives of the RI are described as follows:

- 1) All significant operable units/source areas must be adequately characterized in order to determine appropriate remedial goals to address TCE in groundwater (i.e. type and nature of source(s) of contaminants; cause or mechanism of release, estimated quantity of release(s), and if the release(s) is/are active or inactive). Site characterization activities should be fully integrated with the development and evaluation of alternatives in the Feasibility Study (FS). The contribution of the source/operable unit to the general site contamination should be evaluated in the RI/FS.
- 2) The nature, threat and extent (vertical and horizontal) posed by TCE present at the site must be characterized (including the migration mechanisms) for the purpose of and to the extent necessary for developing and evaluating effective remedial alternatives. The chemical and physical properties of TCE, its mobility and persistence in the environment and its important fate and transport mechanisms should be characterized during the RI. Any human and environmental targets that may be affected by TCE must be identified.
- 3) All data necessary to assess the extent to which releases of TCE at the site pose a threat to human health and the environment must be gathered during the RI. A risk assessment of TCE impacts on identified target areas must be completed consistent with EPA and KDHE guidance and policy.
- 4) Data supporting the analysis (and design, if appropriate) of potential response actions should be gathered during the RI. Individual source control/interim remedial measures plans for identified "hot spots" or source areas of significant TCE contamination should be developed where appropriate. Bench- or pilot-scale treatability studies shall be conducted, when appropriate and practicable, to provide additional data for the detailed analysis of remedial alternatives in the FS and to support engineering design of remedial alternatives.

PURPOSE OF THE FS:

The purpose of the **Feasibility Study (FS)** is to ensure that appropriate remedial alternatives are developed and evaluated such that relevant information concerning the remedial action options can be presented to allow the selection of the appropriate remedy(ies) by KDHE. The primary objectives of the FS are described as follows:

- 1) To identify and evaluate all appropriate remedial alternatives based on site characterization

information obtained during the RI. Remedial action objectives (utilizing results of site-specific risk assessments performed during the RI) and all applicable or relevant and appropriate requirements (ARARs) should be determined in the FS (if not previously determined in the RI). The number of alternatives to be reviewed is highly site-specific and should be determined by the KDHE Project Manager in consultation with Respondent(s).

- 2) To screen and assemble appropriate technologies into remedial action alternatives. Alternatives shall be developed that protect human health and the environment and meet remedial action objectives for the site.
- 3) To evaluate and refine alternatives based on the nine criteria as described in 40 CFR § 300.430 (e)(9)(iii) of the NCP. Relevant EPA guidance documents should also be utilized in developing and evaluating remedial alternatives.
- 4) To conduct treatability studies or pilot tests as necessary and appropriate to support the effectiveness of certain alternatives.
- 5) To recommend the most feasible and effective remedial action for the site based on the nine criteria for evaluating remedial alternatives enumerated in 40 CFR § 300.430(e)(9)(iii) of the NCP.

RI/FS WORK PLAN:

As provided in the Consent Agreement, Respondents shall submit for review and final approval a revised RI/FS Work Plan. The final RI/FS Work Plan shall address KDHE's comments received from prior reviews. Respondent shall implement the RI/FS according to the implementation schedule contained in the final KDHE-approved RI/FS Work Plan. A site Sampling and Analysis Plan, which consists of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP), should be submitted with a site-specific Health and Safety Plan (HASP) in the Work Plan.

IMPLEMENTATION:

Within 60 days from the date of KDHE approval of the FSP, QAPP, and HASP, Respondents shall commence the schedule of work and implement the tasks detailed in the RI/FS Work Plan according to the KDHE-approved schedule. All work performed shall be consistent with activities and procedures proposed in the KDHE-approved Work Plan.

DELIVERABLES:

The general activities and subsequent deliverables that the Respondent(s) are required to complete are specified in 40 CFR § 300.430 of the NCP and are explained in the USEPA document titled, "Guidance

for Conducting Remedial Investigations and Feasibility Studies Under CERCLA". The Implementation Schedule (contained in the Approved Work Plan) should indicate all dates of deliverable submissions, field work schedule, review schedules, etc.

RI REPORT:

Following completion of all field activities the RI Report must be prepared, which includes all data collected from the field activities. The RI Report shall follow appropriate EPA guidance documents, and shall describe in detail the RI work completed. Deviations from the KDHE-approved Work Plan should be discussed. KDHE will review the draft RI and submit comments as deemed appropriate by the Project Manager. Upon satisfactory revision of any draft(s) RI Reports, KDHE will approve the Final RI Report. Upon KDHE approval of the final RI Report, Respondent shall commence FS activities consistent with the KDHE-approved RI/FS Work Plan and implementation schedule.

BASELINE RISK ASSESSMENT:

A quantitative Baseline Risk Assessment (BRA) should be completed during the RI (or FS upon mutual agreement between Respondents) according to pertinent EPA and KDHE guidance and policy. If Respondent(s) elect to prepare the BRA, KDHE will review and approve the BRA. If KDHE prepares the BRA, Respondent will be allowed to review and comment prior to finalization by KDHE.

FS REPORT:

Respondents shall submit an FS Report, which evaluates appropriate remedial alternatives as determined from information gathered during the RI. The FS Report shall evaluate appropriate remedial alternatives based upon the criteria defined in the NCP and EPA guidance documents. A detailed analysis of the selected remedial alternative shall also be provided. The no-action alternative must also be considered in the initial evaluations. As with the RI, KDHE will review draft FS Report submittals, and upon satisfactory resolution of KDHE comments, KDHE will approve the Final FS Report.

COMMUNITY RELATIONS:

KDHE shall prepare a Community Relations Plan (CRP), in accordance with EPA guidance and consistent with 40 CFR § 300.430(c) of the NCP. KDHE shall allow review of the CRP by Respondent(s) prior to final approval. KDHE and the Respondent(s) shall jointly implement the approved plan.

CORRECTIVE ACTION DECISION (CAD)

After approval of the final FS Report, KDHE shall prepare a draft Corrective Action Decision (CAD) stating the preferred proposed remedial alternative as concluded from the RI/FS study. The draft CAD shall support the selection of the preferred remedial alternative(s) by documenting the following: 1) how the

remedy was selected; 2) how the remedy eliminates, reduces, or controls exposures to human and environmental receptors through reduction of mobility, toxicity or volume of site contaminants; 3) how the remedy meets federal, state and local remedial requirements, ARARs and remedial action objectives; and 4) discussion of remediation goals.

KDHE shall publish a notice of the availability of the draft CAD and provide a public comment period of 30 calendar days. The notice shall include an agency contact person and address, for the submission of written and oral comments on the draft CAD. As provided in 40 CFR § 300.430(f)(3)(i) of the NCP, the administrative record for the site should also be available for public comment and review at an appropriate accessible public location (library, KDHE office, etc.) during the 30-day public comment period. A public meeting may be held during the public comment period at or near the site regarding the proposed preferred remedial alternative. A transcript of the meeting shall be prepared for the administrative record.

A final CAD shall be prepared by KDHE that includes KDHE's explanation for any significant differences between the draft CAD and the final CAD as well as a responsiveness summary to the public comments.

EXHIBIT THREE

DELIVERABLES SCHEDULE FOR TRI-COUNTY PUBLIC AIRPORT SITE MORRIS COUNTY, KANSAS CASE No.

<u>DELIVERABLE</u>	<u>DUE DATE</u>
Draft Remedial Investigation (RI/FS) Work Plan	Due 60 days after effective date of Consent Order.
Draft Quality Assurance Project Plan (QAPP), draft Field Sampling Plan (FSP), and draft Health and Safety Plan (HSP)	Due 60 days after effective date of Consent Order.
Final RI/FS Work Plan	Due 30 days after receipt of KDHE's comments on draft RI/FS Work Plan.
Final QAPP, final FSP and final HSP	Due 30 days after receipt of KDHE's comments on draft QAPP, FSP, and HSP.
Community Relations Plan, or Public Information Plan	To be provided by KDHE or KDHE's contractor.
Draft Remedial Investigation (RI) Report	The deliverable date will be set within the Implementation Schedule, which is included within the approved RI/FS work plan.
Final RI Report	Due 30 days after receipt of KDHE's comments on draft RI Report.
Baseline Risk Assessment	The deliverable date will be set within the Implementation Schedule, which is included within the approved RI/FS work plan.
Draft Feasibility Study (FS) Report	The deliverable date will be set within the Implementation Schedule, which is included within the approved RI/FS work plan.
Final FS Report	Due 30 days after receipt of KDHE's comments on draft FS.
Quarterly Progress Reports	Due quarter-annually upon or before the anniversary of the execution date of the Consent Order.

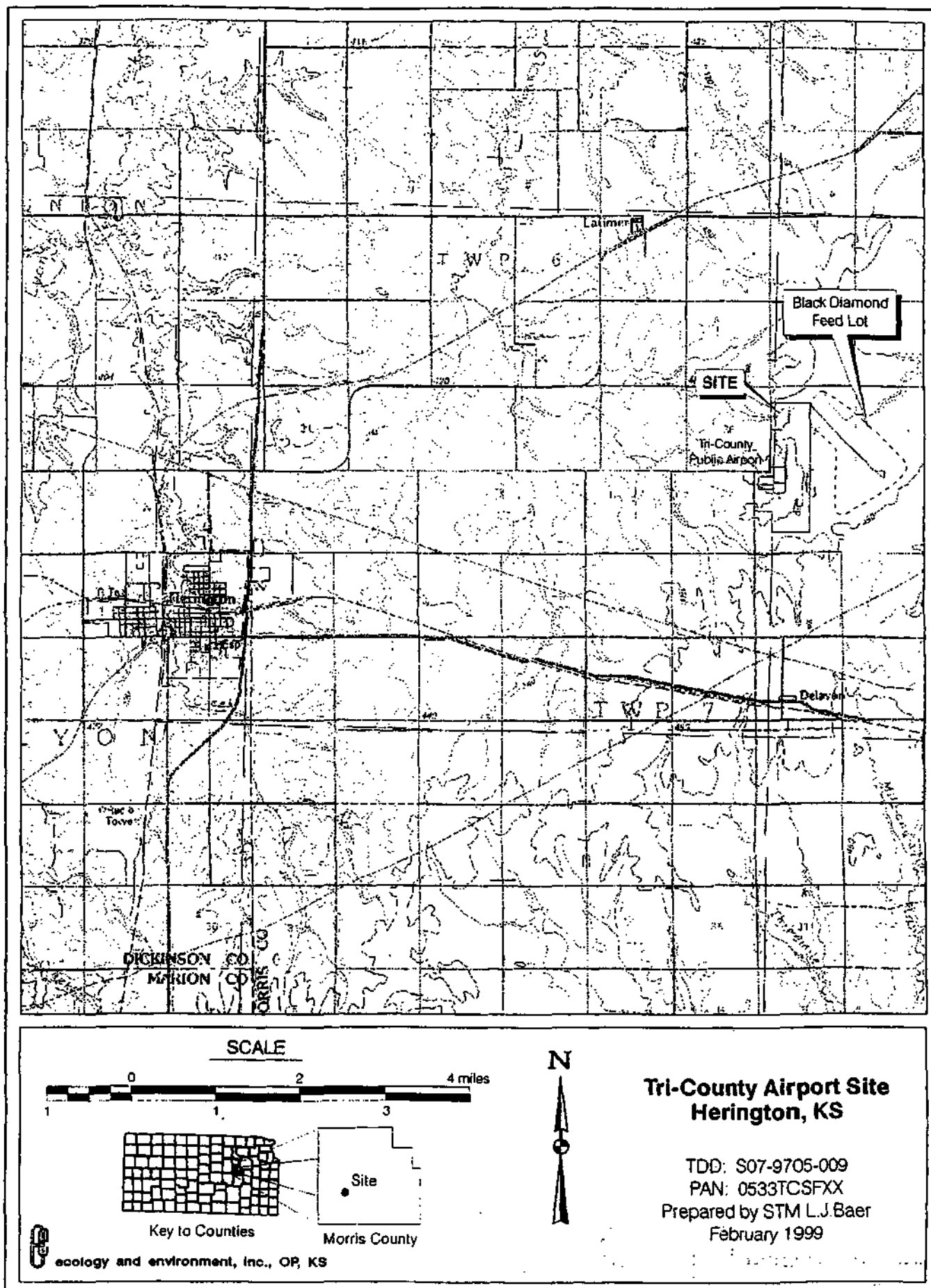


Figure 2-1: SITE LOCATION MAP

EXHIBIT THREE

DELIVERABLES SCHEDULE FOR TRI-COUNTY PUBLIC AIRPORT SITE MORRIS COUNTY, KANSAS CASE No.

<u>DELIVERABLE</u>	<u>DUE DATE</u>
Draft Remedial Investigation (RI/FS) Work Plan	Due 60 days after effective date of Consent Order.
Draft Quality Assurance Project Plan (QAPP), draft Field Sampling Plan (FSP), and draft Health and Safety Plan (HSP)	Due 60 days after effective date of Consent Order.
Final RI/FS Work Plan	Due 30 days after receipt of KDHE's comments on draft RI/FS Work Plan.
Final QAPP, final FSP and final HSP	Due 30 days after receipt of KDHE's comments on draft QAPP, FSP, and HSP.
Community Relations Plan, or Public Information Plan	To be provided by KDHE or KDHE's contractor.
Draft Remedial Investigation (RI) Report	The deliverable date will be set within the Implementation Schedule, which is included within the approved RI/FS work plan.
Final RI Report	Due 30 days after receipt of KDHE's comments on draft RI Report.
Baseline Risk Assessment	The deliverable date will be set within the Implementation Schedule, which is included within the approved RI/FS work plan.
Draft Feasibility Study (FS) Report	The deliverable date will be set within the Implementation Schedule, which is included within the approved RI/FS work plan.
Final FS Report	Due 30 days after receipt of KDHE's comments on draft FS.
Quarterly Progress Reports	Due quarter-annually upon or before the anniversary of the execution date of the Consent Order.

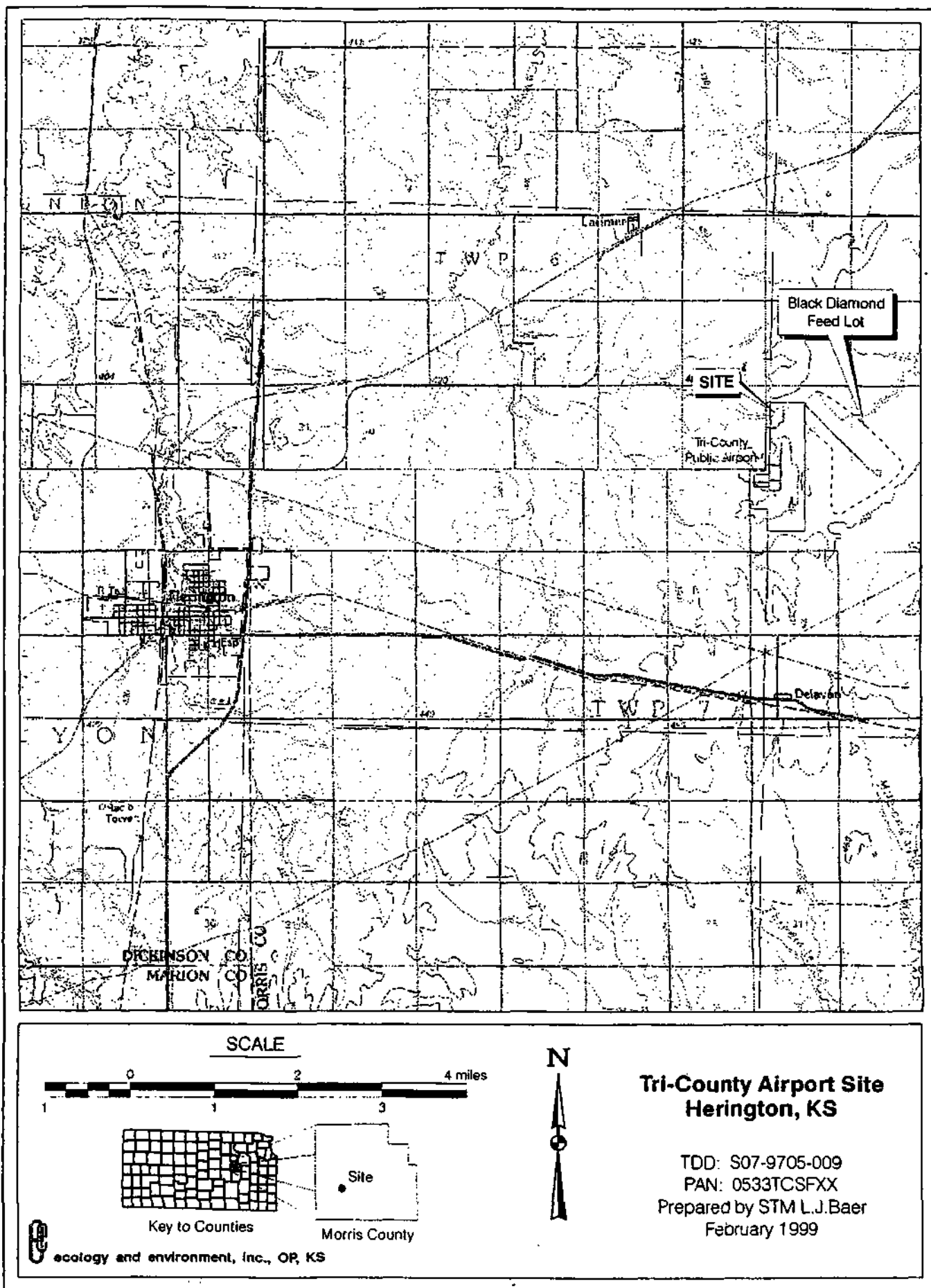


Figure 2-1: SITE LOCATION MAP